

15 FAM 400

REAL PROPERTY ACQUISITION ABROAD

15 FAM 410

GENERAL POLICY AND SCOPE

(CT:OBO-36; 10-31-2013)
(Office of Origin: OBO)

15 FAM 411 AUTHORITY AND SCOPE

15 FAM 411.1 Authority

(CT:OBO-1; 04-29-2005)

The Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292 - 302), and the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396).

15 FAM 411.2 Scope

(CT:OBO-36; 10-31-2013)

This subchapter applies to the acquisition of real property abroad in the name of the *U.S.* Government. It encompasses purchases, exchanges, gifts, and *capital* leases (*CLs*) for use as *nonresidential* or residential space by the Department of State and other U.S. Government agencies represented at post and their employees. *CLs* are treated as acquisitions for purposes of programming, authorization, and funding; however, the leasing regulations of 15 FAM 300 govern the documentation required for *CL* proposals and lease contracts. See 15 FAM 432 through 15 FAM 460 for procedures to implement these regulations. Direct any questions or comments on these regulations or procedures to the Directorate *for* Planning and Real Estate, in the Bureau of Overseas Buildings Operations (OBO/PRE), for Department *of State* properties, or, in the case of *U.S.* Agency for International Development (USAID) properties, the Overseas Management Division, Office of Management Services, Bureau for Management, USAID/Washington (USAID/W-M/MS/OMD).

15 FAM 412 POLICY

15 FAM 412.1 General

(CT:OBO-36; 10-31-2013)

- a. U.S. Government-owned property allows the post stability, flexibility, and cost control. However, purchasing property requires large initial outlays of funds and ongoing maintenance costs, so the Department must weigh carefully the benefits of leasing versus purchasing.
- b. Only the Department of State and the U.S. Agency for International Development (USAID) are authorized to buy real property abroad for diplomatic use. Posts must not take independent action on real property acquisition matters. The Bureau of Overseas Buildings Operations (OBO) for Department *of State* properties, or, in the case of USAID properties, USAID/W-M/MS/OMD, must oversee all real property acquisition negotiations.
- c. Throughout 15 FAM 400, references to OBO are deemed to apply to State properties and references to USAID/W-M/MS/OMD are deemed to apply to USAID properties.

15 FAM 412.2 Residences with Swimming Pools

15 FAM 412.2-1 Justification and Conditions

(CT:OBO-36; 10-31-2013)

- a. Except as noted herein, the Department of State neither constructs nor acquires residences with swimming pools:
 - (1) The Department may purchase or construct residences with swimming pools *at Chief of Mission Residences (CMR), Deputy Chief of Mission Residences (DCR), Principal Officer Residences (POR), and Marine Security Guard Residences (MSGR).*
 - (2) Posts may recommend purchase of a residential property with a swimming pool if appropriate residential properties come equipped with swimming pools as a result of the country's climate, culture, or other factors.
- b. Posts recommending purchase of a residential property with a *swimming* pool must provide justification (see 15 FAM 432.2). The decision to purchase must be based on a financial analysis that takes into consideration the appraised value, comparable prices for similar properties (with and without *swimming* pools), and the present value of the property versus rental cost.
- c. Posts will not require owners to install swimming pools as a condition of or prerequisite to purchase. Installation of a swimming pool is considered a minor improvement subject to the policy and procedures of 15 FAM 600.

15 FAM 412.2-2 Required Swimming Pool *Barrier*

(CT:OBO-36; 10-31-2013)

Swimming pools *located* at *U.S. Government-owned or leased housing* must have at least a 4-foot fence or other barrier surrounding the entire *swimming* pool and separating pools from residences. The gate must be self-closing, self-latching, and lockable; the latch must be at least 4.5 feet off the ground (an extension of the gate or a gate that is higher than the surrounding barrier may be required). *Refer to 15 FAM 957.4 and 15 FAM 252.5 a (3) for additional guidance concerning this requirement.*

15 FAM 412.3 USAID Acquisition of Property

(CT:OBO-36; 10-31-2013)

(USAID only)

Section 636(c) of the Foreign Assistance Act of 1961 authorizes USAID to purchase, construct, or *execute a capital lease for residential or nonresidential* facilities when a USAID mission cannot meet its basic requirements by leasing or by use of U.S. *Government* or cooperating-country government property available to USAID. (See 15 FAM 460 for conditions and limitations on USAID authority.)

15 FAM 412.4 Purchase Agreements

(CT:OBO-36; 10-31-2013)

When OBO authorizes the purchase of real property for the Department *of State*, or, in the case of USAID properties, USAID/W-M/MS/OMD authorizes the purchase of real property, post must prepare a written agreement that may consist of a sales contract or, subject to local law, a purchase option. OBO and the Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) for Department *of State* properties, or, in the case of USAID properties, USAID/W-M/MS/OMD, must review and approve all such agreements prior to execution.

15 FAM 412.4-1 Required Provisions for Purchase Agreements

(CT:OBO-10; 08-24-2006)

15 FAM 442 covers the requirements and guidelines for purchase agreements. Whether arising out of a formal sales contract or out of an option and exercise of the option, the purchase agreement must conform to these requirements.

15 FAM 412.4-2 Special Rights

(CT:OBO-24; 01-26-2012)

- a. If a stream of water runs through a property, post (with guidance from OBO or USAID/W) must investigate the water rights and obtain the legal right to the

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permanent flow of water.

- b. If necessary and useful under local law, post should obtain the local authorities' written confirmation that the property will not be subject to the extension of any streets through easements or encroachments upon the property after its purchase.
- c. The deed or other instrument should convey any other special rights simultaneously with the transfer of title.
- d. Post must confirm the full bundle of rights that is inherent in the acquisition (e.g., mineral rights, air rights, access, etc.).

15 FAM 412.4-3 Payment

(CT:OBO-36; 10-31-2013)

- a. Unless OBO for Department *of State* properties, or, in the case of USAID properties, USAID/W-M/MS/OMD, authorizes otherwise, post should pay the purchase price and the fees for any other incidental expenses, such as water rights, when the title transfer is complete.
- b. Offshore payments for the acquisition of real property require an OBO waiver.

15 FAM 412.4-4 Acquisitions by Gift

(CT:OBO-36; 10-31-2013)

Any offers or gifts to post must be reported to OBO/PRE for Department *of State* properties, or, in the case of USAID properties, USAID/W-M/MS/OMD. Post may not accept any gifts without prior approval (see 15 FAM 443). Gifts include real property, improvements to real property, furniture, furnishings, equipment, stocks, bonds, or other valuables offered to the U.S. Government for the purpose of supporting the U.S. Government's foreign buildings and properties program.

15 FAM 412.5 Documents and Records

(CT:OBO-24; 01-26-2012)

Posts must maintain and submit to OBO, documents and records relating to real property acquisitions (see 15 FAM 450). Posts must enter all pertinent Real Property Application (RPA) data in the RPA data base as soon as the purchase is completed. In the case of USAID acquisitions, these documents and records must be submitted to both USAID/W-M/MS/OMD and OBO.

15 FAM 413 POLICY TO VALUE REAL PROPERTY FOR ACQUISITIONS

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(CT:OBO-36; 10-31-2013)

Real estate (nonresidential and residential): In order to protect the financial interests of the Department when purchasing real property, the Department will obtain two independent professional appraisals. The appraisers will be selected and the appraisal reports reviewed by a member of the Office of Master Planning and Evaluations (OBO/PRE/MPE) staff. When it is not possible or cost effective to hire credible appraisers, OBO/PRE/MPE may prepare an in-house appraisal report:

- (1) Appraisals should be ordered with enough time for the Department to make credible business decisions regarding the acquisition of the property. A minimum of 90 days is recommended. Appraisals will be funded by OBO;
- (2) Questions regarding this requirement or *the scope* of work to procure appraisals may be directed to the Office of Master Planning and Evaluations in the Directorate *for* Planning and Real Estate *in* the Bureau of Overseas Buildings Operations (OBO/PRE/MPE) or, if USAID is operating independently, to USAID/W- M/MS/OMD; and
- (3) This appraisal requirement may be waived by OBO/PRE/MPE if the cost of the appraisal appears high relative to the amount at stake; if only a single credible appraisal can be obtained; if local conditions and experience indicate no credible appraisals can be obtained; or if it is in the best interests of the *U.S. Government* based on the facts and circumstances.

NOTE: In the case of USAID properties operating independently, the same process as outlined herein will apply for funding, oversight, and approval of appraisals by USAID/W-M/MS/OMD.

15 FAM 414 THROUGH 419 UNASSIGNED